

MV 95-2

Tax Type: MOTOR VEHICLE USE TAX

Issue: Private Vehicle Use Tax - Business Reorg/Family Sale

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
COUNTY OF SANGAMON

DEPARTMENT OF REVENUE OF THE)
STATE OF ILLINOIS)
) Docket #
v.) I.D. #
)
Taxpayer)
) William J. Hogan
) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX,

SYNOPSIS: This matter comes on for hearing pursuant to the Taxpayer's timely protest of Notice of Tax Liability No. XXXXX, issued by the Department of Revenue in June 1991, for Vehicle Use Tax due on the transfer of a 1988 Ford F250. At issue is whether the transfer of the truck from XXXXX to XXXXX qualifies for the \$15.00 tax applicable to corporate transfers wherein the beneficial ownership is not changed as provided under the terms of 625 ILCS 5/3-1001. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. XXXXX was the sole owner of a 1988 Ford F250 pickup truck. He transferred the truck to XXXXX on June 26, 1991. (See Department Exhibit #6, certificate of title.)

2. XXXXX was chartered by the Secretary of State on November 13, 1990. (See Taxpayer Exhibit #1, Stipulation of Facts.)

3. 1,000 shares of stock were issued by XXXXX in the following amounts: XXXXX - 254 shares; XXXXX - 14 shares; XXXXX and XXXXX as joint tenants - 732 shares. (See Taxpayer Exhibit #1, Stipulation of Facts.)

4. XXXXX and XXXXX are husband and wife. XXXXX and XXXXX are the sons of XXXXX and XXXXX (See Taxpayer's Exhibit #1, Stipulation of Facts.)

5. There has been no change in the stock ownership of XXXXX. (See Taxpayer's Exhibit #1, Stipulation of Facts.)

CONCLUSIONS OF LAW The Vehicle Use Tax provides in pertinent part:

"5/3-1001. Imposition of tax-Exceptions 3-1001. A tax is hereby imposed on the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of this Code acquired by purchase, and having a year model designation preceding the year of application for title by 5 or fewer years prior to October 1, 1985 and 10 or fewer years on and after October 1, 1985 and prior to January 1, 1988. On and after January 1, 1988, the tax shall apply to all motor vehicles without regard to model year. Except that the tax shall not apply

(i) if the use of the motor vehicle is otherwise taxed under the Use Tax Act;

(ii) if the motor vehicle is bought and used by a governmental agency or a society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes;

(iii) if the use of the motor vehicle is not subject to the Use Tax Act by reason of subsection (a), (b), (c), (d), (e) or (f) of Section 3-55 of that Act dealing with the prevention of actual or likely multistate taxation;

(iv) to implements of husbandry;

(v) when a junking certificate is issued pursuant to Section 3-117(a) of this Code;

(vi) when a vehicle is subject to the replacement vehicle tax imposed by Section 3-2001 of this Act;

(vii) when the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is a surviving spouse. Prior to January 1, 1988, the rate of tax shall be 5% of the selling price for each purchase of a motor vehicle covered by Section 3-1001 of this Code. Except as hereinafter provided, beginning January 1, 1988, the rate of tax shall be as follows for transactions in which the selling price of the motor vehicle is less than \$15,000:

Number of Years Transpired After Model Year of Motor Vehicle	Applicable Tax
1 or less	\$390
2	290
3	215
4	165
5	115
6	90
7	80
8	65
9	50
10	40
over 10	25

Except as hereinafter provided, beginning January 1, 1988, the rate of tax shall be as follows for transactions in which the selling price of the motor vehicle is \$15,000 or more:

Selling Price	Applicable Tax
\$15,000-\$19,999	\$750
\$20,000-\$24,999	\$1,000
\$25,000-\$27,999	\$1,250
\$30,000 and over	\$1,500

For the following transactions, the tax rate shall be \$15 for each motor vehicle acquired in such transaction:

- (i) when the transferee or purchaser is the spouse, mother, father, brother, sister or child of the transferor;
- (ii) when the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is not a surviving spouse;
- (iii) when a motor vehicle which has once been subjected to the Illinois retailers' occupation tax or use tax is transferred in connection with the organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business wherein the beneficial ownership is not changed. (625 ILCS 6/3-1001)"

On examination of the record established, this Taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence to overcome the Department's prima facie case of tax liability under the assessment in question.

Under subsection (iii) of the above-cited statute, beneficial ownership has changed; namely from XXXXX solely and exclusively to XXXXX as one of several shareholders in XXXXX Accordingly, the determination by the Department that XXXXX is subject to the statutory rate of tax imposed by the Vehicle Use Tax Act must stand as a matter of law.

RECOMMENDATION Pursuant to my findings of fact and conclusions of law I recommend that Notice of Tax Liability No. XXXXX be finalized in its entirety.

William J. Hogan
Administrative Law Judge